IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5963 OF 2005
IN
CRIMINAL APPEAL NO.851 OF 2005

Mr.Mohammed Aforzz Abdul Razzak. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr.M.H.Solkar, for applicant.

Mr.D.S.Mhaispurkar, APP.

CORAM: A.M.KHANWILKAR,J
DATE : NOVEMBER 17, 2005.

P.C. :

1. Applicant has been convicted by the Trial Court for offence punishable under section 126 read with 120-B of the Indian Penal Code and sentenced to suffer Rigorous imprisonment for five years and to pay a fine in the sum of Rs.10,000/- and in default of payment of fine amount to suffer further imprisonment for one year. In addition, he has been found guilty for offence punishable under section 471 read with 467, further read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- and in default of payment of fine to undergo further imprisonment for one year. As the sentence awarded is short sentence and as the main

appeal has already been admitted by this court, ordinarily, the applicant would be entitled for the bail.

2. The prayer for bail however, is resisted by the learned APP on the argument that the applicant has been found guilty of the offence under section 126 of the Indian Penal Code, which is a serious offence. Besides, during the pendency of the trial, the applicant, while on bail, had threatened prosecution witness No.5 on his mobile and questioned as to why his father had complained against the applicant and asked to withdraw the complaint or else face with dire consequences. On the above submission, the Learned APP submits that prayer for bail be rejected, instead hearing of the appeal be expedited.

3. The request of the learned APP seems to be reasonable. However, it is not possible to fix the appeal for hearing in a short period. This is so because, presently appeals spread over from year 1995 are still pending for hearing and there are large number of appeals involving short sentence, such as the present one. In this backdrop, I am inclined to consider the present bail application. Indeed, the

learned APP is justified in pointing out the observations made by the trial court in the impugned judgment against the applicant in paragraph-13. However, it cannot be overlooked that the trial has already concluded and the entire evidence has come on record. On the basis of that evidence, the applicant has already been convicted. In such a case, it will be inappropriate to entertain the apprehension that the applicant will tamper with the evidence, as was possible during the course of trial. To my mind, though the applicant will be released on bail, it will be subject to strict conditions including to ensure that he does not indulge in threatening the prosecution witnesses and is always available as and when called upon by this court.

4. In my opinion, therefore, as the applicant was already in jail for over 5 months during the trial and sentence imposed is short sentence and it is unlikely that the appeal will be heard very shortly; coupled with the fact that the applicant was on bail during the trial and the only incidence about misusing the bail as pointed out is one of administering threat to prosecution witness No.5, for the reasons already indicated above, applicant deserves to be enlarged on bail on the following

conditions.

(A) Applicant shall furnish bond in the sum of Rs.1 Lakh with two local sureties in like amount.

(B) The applicant shall not indulge in threatening the prosecution witnesses or attempt to tamper with the evidence in any manner during the pendency of the appeal.

(C) The applicant shall report to DCB CID, Crawford Market, Mumbai once in a month on first Monday of every English Calender Month between 10 a.m. to 12 noon.

(D) The applicant shall keep informed the concerned DCB CID about his latest place of residence. No direction is passed regarding passport as I was informed that the same is already in the custody of the Police Authority.

(E) The applicant shall co-operate for early disposal of the appeal and should abide by such directions as may be passed from time

to time in that behalf.

4. Application is disposed of in the above terms.